Section 4.1 Disclosure of Behavioral Health Information

4.1.1 Introduction

To improve the efficiency and effectiveness of the health care system, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 included provisions for national standards for electronic health care transactions. To safeguard the privacy of health care information, Congress incorporated provisions that mandated the adoption of Federal privacy protections for individually identifiable health information. HIPAA specifies how a person's protected health information (PHI) will be used and disclosed. HIPAA also provides individuals with certain rights to control the use and disclosure of their PHI. The Privacy Rule is applicable to any agency that has identified itself to be one of three types of "covered entities": health plan, health care provider and/or health care clearinghouse. By the compliance date of April 14, 2003, covered entities must have implemented standards to protect and guard against the misuse of individually identifiable health information.

The Arizona Department of Health Services/Division of Behavioral Health Services, the T/RBHAs and behavioral health providers must all comply with HIPAA when providing health care services and/or paying for services with State and Federal funds. Each organization is a separate "covered entity" and therefore must individually institute practices for complying with HIPAA.

This section is intended to provide guidance as to whom information can be disclosed to and when authorization is required prior to that disclosure. It is not all inclusive of the HIPAA and State Laws; the references throughout are available for providers to access and examine the applicable laws for more detail.

4.1.2 References

The following citations can serve as additional resources for this content area:

- AHCCCS/ADHS Contract
- ADHS/T/RBHA Contract
- Health Insurance Portability and Accountability Act Privacy Manual
- 42 CFR Part 2
- A.R.S. § 12-2291
- A.R.S. § 12-2293

- A.R.S. § 13-3620
- A.R.S. § 36-501
- A.R.S. § 36-504
- A.R.S. § 36-507
- A.R.S. § 36-509
- A.R.S. § 36-517.01
- A.R.S. § 36-517.02
- A.R.S. § 36-664
- A.R.S. Title 36, Chapter 32
- A.R.S. § 41-3804
- A.R.S. § 46-454
- A.R.S. Title 14, Chapter 5, Article 2 or 3
- A.R.S. § 12-2294
- A.R.S. § 36-661, *et seq.*
- A.R.S. § 36-501
- A.R.S. § 36-3701, *et seq.*
- A.A.C. Title 9, Chapter 20
- A.A.C. Title 9, Chapter 21
- 45 CFR Part 164, Subparts A and E
- 45 CFR Part 160, Subparts A and B

4.1.3 Scope

To whom does this apply?

All persons receiving, or who have received, services through Arizona's public behavioral health system.

4.1.4 Did you know…?

- The "minimum necessary" standard ensures that only the minimum information necessary to accomplish an intended purpose is requested and disclosed.

- The United States Health and Human Services Department/Office of Civil Rights (OCR) has the authority for administering and enforcing compliance with the Privacy Rule. The OCR can assess significant penalties for failure to comply with HIPAA, including monetary fines and the loss of federal funds.

- Other components of HIPAA include the Transaction and Code Set Rules and the Security Rules.

- All covered entities must have a HIPAA Compliance Officer to hear complaints regarding the provider's practices.

4.1.5 Objectives

To give guidance to behavioral health providers on the obligations relating to the HIPAA laws and State laws and regulations related to the use, disclosure or when responding to requests for protected health information.

4.1.6 Definitions

HIPAA

Alcohol and Drug Abuse Program (42 CFR Part 2)

Confidential HIV Information

Collaborative Teams

Family Member

Health Care Decision-Maker

Medical Records

Qualified Service Organization

Individual

4.1.7 Procedures

4.1.7-A. Overview of confidentiality information

All information obtained in the course of providing behavioral health services is confidential and cannot be disclosed unless permitted by federal or state law. The law regulates two major categories of confidential information: 1) information obtained when providing behavioral health services not related to alcohol or drug abuse treatment; and 2) information obtained in the referral, diagnosis and treatment of alcohol or drug abuse.

Behavioral Health Information Not Related to Alcohol and Drug Treatment
Information obtained when providing behavioral health services not related to alcohol and drug abuse treatment is governed by state law and the HIPAA Privacy Rule, 45 CFR, Part 164, Subparts A and E, Part 160 Subparts A and B ("the HIPAA Rule"). The HIPAA Rule permits a covered entity (health plan, health care provider, health care clearinghouse) to use or disclose protected health information with or without patient authorization in a variety of circumstances, some of which are required and others that are permissive. Many of the categories of disclosures contain specific words and phrases that are defined in the HIPAA Rule. Careful attention must be paid to the definitions of words and phrases in order to determine whether disclosure is allowed. In addition, the HIPAA Rule may contain exceptions or special rules that apply to a particular disclosure. State law may affect a disclosure. For example, the HIPAA Rule may preempt a state law or a state law may preempt the HIPAA Rule. In addition, a covered entity must, with certain exceptions, make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the disclosure. Before disclosing protected health information, it is good practice to consult the specific citation to the HIPAA Rule, state law and consult with legal counsel before disclosing an individual's protected health information. See 4.1.7-C. for more detail regarding the disclosure of behavioral health information not related to alcohol or drug treatment.

Drug and Alcohol Abuse Information
Information regarding treatment for alcohol or drug abuse is afforded special confidentiality by Federal statute and regulation. This includes any information concerning a person's diagnosis or treatment from a federally assisted alcohol or drug abuse program or referral to a federally assisted alcohol or drug abuse program. See 4.1.7-D. for more detail regarding the disclosure of drug and alcohol information.

4.1.7-B. General procedures for all disclosures

- Unless otherwise excepted by state or federal law, all information obtained about a person related to the provision of behavioral health services to the person is confidential whether the information is in oral, written, or electronic format.

- All records generated as a part of the ADHS/DBHS or RBHA grievance and appeal processes are legal records, not medical records, although they may contain copies of portions of a person's medical record. To the extent these legal records contain personal medical information, ADHS/DBHS or the RBHA will redact or deidentify the information to the extent allowed or required by law.

- List of Persons Accessing Records. The RBHA shall ensure that a list is kept of every person or organization who inspects a currently or previously enrolled person's records other than the person's clinical team, the uses to be made of that information and the staff person authorizing access. The access list shall be placed in the enrolled person's record and shall be made available to the enrolled person, their guardian or other designated representative.

- Disclosure to Collaborative Teams. Disclosure of information to members of a collaborative team may or may not require an authorization depending upon the type of information to be disclosed and the status of the receiving party. Information concerning diagnosis, treatment or referral for drug or alcohol treatment can only be disclosed to members of a collaborative team with patient authorization as prescribed in 4.1.7-D. Information not related to drug and alcohol treatment may be disclosed without patient authorization to members of a collaborative team who are providers of health; mental health or social services, provided the information is for treatment purposes as defined in the HIPAA Rule. Disclosure to members of a collaborative team who are not providers of health, mental health or social services requires the authorization of the person or the person's legal guardian or parent as prescribed in 4.1.7-C.

- Disclosure to persons in court proceedings. Disclosure of information to persons involved in court proceedings including attorneys, probation or parole officers, guardians ad litem and court appointed special advocates may or may not require an authorization depending upon the type of information to be disclosed and whether the court has entered orders permitting the disclosure.

4.1.7-C. Disclosure of information not related to alcohol and drug treatment

The HIPAA Rule and state law allow a covered entity to disclose protected health information under a variety of conditions. This is a general overview and does not include an entire description of legal requirements for each disclosure. The latter part of Subsection 4.1.7-C.

contains a more detailed description of circumstances that are likely to involve the use or disclosure of behavioral health information.

Below is a general description of all required or permissible disclosures:

- to the individual;
- to health, mental health and social service providers for treatment, payment or health care operations;
- incidental to a use or disclosure otherwise permitted or required by 45 CFR Part 164, Subpart E;
- to a person or entity with a valid authorization;
- provided the individual is informed in advance and has the opportunity to agree or prohibit the disclosure:
- for use in facility directories;
- to persons involved in the individual's care and for notification purposes;
- when required by law;
- for public health activities;
- about victims of child abuse, neglect or domestic violence;
- for health oversight activities;
- for judicial and administrative proceedings;
- for law enforcement purposes;
- about deceased persons;
- for cadaveric organ, eye or tissue donation purposes;
- for research purposes;
- to avert a serious threat to health or safety or to prevent harm threatened by patients;
- to a human rights committee;
- for purposes related to the Sexually Violent Persons program;
- with confidential communicable disease information;
- personal representatives including agents under a health care directive;
- for evaluation or treatment;
- to business associates;
- to the Secretary of Health and Human Services to investigate or determine compliance with the HIPAA Rule;
- for specialized government functions;
- for worker's compensation;
- under a data use agreement for limited data;
- for fundraising;
- for underwriting and related purposes; and
- to the Arizona Center For Disability Law in its capacity as the State Protection and Advocacy Agency.

Below is a description of the circumstances in which behavioral health information is likely to be required or permitted to be disclosed:

- Disclosure to an individual - A covered entity is required to disclose information in a designated record set to an individual when requested unless contraindicated. See A.R.S. § 36-507(3); 45CFR §§ 164.524; and 164.528. A covered entity should read and carefully apply the provisions in §164.524 before disclosing protected health information in a designated record set to an individual.

An individual has a right of access to his or her designated record set, except for psychotherapy notes and information compiled for pending litigation. See §164.524(a)(1). Under certain conditions a covered entity may deny an individual access to the medical record without providing the individual an opportunity for review. See §164.524(a)(2). Under other conditions, a covered entity may deny an individual access to the medical record and must provide the individual with an opportunity for review. See §164.524(a)(3). A covered entity must follow certain requirements for a review when access to the medical record is denied. See §164.524(a)(4).

An individual must be permitted to request access or inspect or obtain a copy of his or her medical record. See §164.524(b)(1). A covered entity is required to act upon an individual's request in a timely manner. See §164.524(b)(2).

A covered entity must follow certain requirements for providing access, the form of access and the time and manner of access. See §164.512(c).

A covered entity is required to make other information available in the record when access is denied, must follow other requirements when making a denial of access, must inform an individual of where medical records are maintained and must follow certain procedures when an individual requests a review when access is denied. See § 164.512(d).

A covered entity is required to maintain documentation related to an individual's access to the medical record. See §164.524(e).

An individual may inspect and be provided with one free copy per year of his or her own medical record.

- Disclosure with an individual's authorization - The HIPAA Rule allows information to be disclosed with authorization.

  For all uses and disclosures that are not permitted by the HIPAA Rule, patient authorization is required. See §§ 164.502(a)(1)(iv); and 164.508. An authorization must contain all of the elements in § 164.508.

  The authorization must contain the following, be written in plain language and a copy must be provided to the individual:
  - A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
  - The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
  - The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;

- A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;

- An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository; and

- Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act for the individual must also be provided.

In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

- The individual's right to revoke the authorization in writing, and either:
- The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
- A reference to the covered entity's notice of privacy practices if the notice of privacy practices tells the individual how to revoke the authorization.
- The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:
- The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in § 164.502 (b)(4) applies; or
- The consequences to the individual of a refusal to sign the authorization when, in accordance with § 164.502 (b)(4), the covered entity can condition treatment, enrollment in the health plan or eligibility for benefits on failure to obtain such authorization.
- The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient.

- Disclosure to health, mental health and social service providers for treatment, payment or health care operations; reports of abuse and neglect - Disclosure is permitted without patient authorization to health, mental health and social service providers involved in caring for or providing services to the person for treatment, payment or health care operations as defined in the HIPAA Rule. These disclosures are typically made to primary care physicians, psychiatrists, psychologists, social workers (including DES and DDD) or other behavioral health professionals. Particular attention must be paid to § 164.506(c) and the definitions of treatment, payment and health care operations to determine the scope of disclosure. For example, a covered entity is allowed to disclose protected health information for its own treatment, payment or health care operations. See §164.506(c)(1). A covered entity may disclose for treatment activities of a health care provider including providers not covered under the HIPAA Rule. See § 164.506(c)(2). A covered entity may disclose to both covered and non-covered health care providers for payment activities. See § 164.506(c)(3). A

covered entity may disclose to another covered entity for the health care operations activities of the receiving entity if each entity has or had a direct treatment relationship with the individual and the disclosure is for certain specified purposes in the definition of health care operations. See §164.506(c)(4).

If the disclosure is not for treatment, payment, or healthcare operations or required by law, patient authorization is required.

The HIPAA rule does not modify a covered entity's obligation under A.R.S. § 13-3620 to report child abuse and neglect to Child Protective Services or disclose a child's medical records to Child Protective Services for investigation of child abuse cases.

Similarly, a covered entity may have an obligation to report adult abuse and neglect to Adult Protective Services. See A.R.S. § 46-454. The HIPAA Rule imposes other requirements in addition to those contained in A.R.S. § 46-454, primarily that the individual agree to the making of the report and that the individual be notified of the report or a determination by the reporting person that it is not in the individual's best interest to be notified. See §164.512(c).

- Disclosure to family members - A covered entity may disclose protected health information without authorization to family members actively participating in the patient's care, treatment or supervision. An agency or non-agency treating professional may only release information relating to the person's diagnosis, prognosis, need for hospitalization, anticipated length of stay, discharge plan, medication, medication side effects and short-term and long-term treatment goals. See A.R.S. § 36-509(A)(8). For purposes of disclosure of protected health information, "family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation. See A.R.S. § 36-501(14).

  An agency or non-agency treating professional shall release information only after the treating professional or that person's designee interviews the person or performs an evaluation to determine whether or not release is in that person's best interests. A decision to release or withhold information is subject to review pursuant to A.R.S. § 36-517.01.

  The HIPAA Rule imposes additional requirements when disclosing protected health information to family members. A covered entity may disclose to a family member or other relative the protected health information directly relevant to the person's involvement with the individual's care or payment related to the individual's health care, and depending upon whether the individual is present, requires the covered entity to either obtain the individual's agreement to the disclosure or to provide the individual with the opportunity to object to the disclosure. See § 164.510(b).

- Disclosure to an agent under a health care directive - A covered entity may treat an agent appointed under a health care directive as a personal representative of the individual. See A.R.S. § 36-509(A)(12); §§164.502(a)(1)(i); and 164.502(g). Examples of agents appointed to act on an individual's behalf include an agent under a health care power of attorney, see A.R.S. § 36-3221 *et seq.*; surrogate decision makers, see A.R.S. § 36-3231; and an agent under a mental health care power of attorney, see A.R.S. § 36-3281.

- Disclosure to a personal representative
  - Unemancipated Minors. A covered entity may disclose protected health information to a personal representative, including the personal representative of an unemancipated minor, unless one or more of the exceptions described in §§ 164.502(g)(3)(i) or 164.502(g)(5) applies. See § 164.502(g)(1).

    The general rule is that if state law, including case law, requires or permits a parent, guardian or other person acting *in loco parentis* to obtain protected health information, then a covered entity may disclose the protected health information. See § 164.502(g)(3)(ii)(A).

    Similarly, if state law, including case law, prohibits a parent, guardian or other person acting *in loco parentis* from obtaining protected health information, then a covered entity may not disclose the protected health information. See§164.502(g)(3)(ii)(B).
    When state law, including case law, is silent on whether protected health information can be disclosed to a parent, guardian or other person acting *in loco parentis,* a covered entity may provide or deny access under § 164.524 to a parent, guardian or other person acting *in loco parentis* if the action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment. See §164.502(g)(3)(ii)(C).

  - Adults and Emancipated Minors. If under applicable law, a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative with respect to protected health information relevant to such personal representation. See § 164.502(g)(2). Simply stated, if there is a state law that permits the personal representative to obtain the adult or emancipated minor's protected health information, the covered entity may disclose it. A covered entity may withhold protected health information if one or more of the exceptions in § 164.502(g)(5) applies.

  - Deceased persons. If under applicable law, an executor, administrator or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative with respect to protected health information relevant to the personal representation. See §§164.502(g) and 164.502(g)(4). A covered entity may withhold protected health information if one or more of the exceptions in § 164.502(g)(5) applies. A.R.S. §§ 12-2294(B)(8) and 12-2294(C) provide certain persons with authority to act on behalf of a deceased person.

- Disclosure for court ordered evaluation or treatment - An agency in which a person is receiving court ordered evaluation or treatment is required to immediately notify the person's guardian or agent or, if none, a member of the person's family that the person is being treated in the agency. See A.R.S. § 36-504(B). The agency shall release any further information only after the treating professional or that person's designee interviews the person undergoing treatment or evaluation to determine whether or not release is in that person's best interests. A decision to release or withhold information is subject to review pursuant to section A.R.S. § 36-517.01.

If the individual or the individual's guardian makes the request for review, the reviewing official must apply the standard in § 164.524(a)(3). If a family member makes the request for review, the reviewing official must apply the "best interest" standard in A.R.S. § 36-517.01.

The reviewer's decision may be appealed to the superior court. See A.R.S. § 517.01(B). The agency or nonagency treating professional shall not release any treatment information during the period an appeal may be filed or is pending.

- Disclosure to licensing agencies - A covered entity may disclose protected health information without patient authorization to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions or other activities necessary for appropriate oversight of entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards. See § 164.512(d).

- Disclosure for judicial and administrative proceedings including court ordered disclosures - A covered entity may disclose protected health information without patient authorization in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by the order. See § 164.512(e). In addition, a covered entity may disclose information in response to a subpoena, discovery request or other lawful process without a court order if the covered entity receives satisfactory assurances that the requesting party has made reasonable efforts to provide notice to the individual or has made reasonable efforts to secure a qualified protective order. See §§ 164.512(e)(1)(iii),(iv) and (v) for what constitutes satisfactory assurances.

- Disclosure to persons doing research - A covered entity may disclose protected health information to persons doing research without patient authorization provided it meets the de-identification standards of §164.514(b). If the covered entity wants to disclose protected health information that is not de-identified, patient authorization is required or an Institutional Review Board or a privacy board in accordance with the provisions of § 164.512(i)(1)(i) can waive it.

- Disclosure to prevent harm threatened by patients - Mental health providers have a duty to protect others against the conduct of a patient. See A.R.S. § 36-517.02. When a patient threatens imminent serious harm or violence to another person, the provider has a duty to exercise reasonable care to protect the foreseeable victim of the danger. *Little v. All Phoenix South Community Mental Health Center, Inc.,* 186 Ariz. 97, 919 P.2d 1368 (1996). A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information without patient authorization if the covered entity, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or is necessary for law enforcement authorities to identify or apprehend an individual. See §164.512(j). See §§ 164.512(j)(1)(ii); 164.512(e)(2) and (3) for rules that apply for

disclosures made to law enforcement. See § 164.512(4) for what constitutes a good faith belief.

- Disclosures to human rights committees - Protected health information may be disclosed to a human rights committee without patient authorization provided personally identifiable information is redacted or de-identified from the record. See A.R.S. §§ 36-509(A)(13) and 41-3804. In redacting personally identifiable information, a covered entity must comply with the HIPAA Rule de-identification standards in § 164.514(b) and not state law. If a human rights committee wants non- redacted identifiable health information for official purposes, it must first demonstrate to ADHS/DBHS that the information is necessary to perform a function that is related to the oversight of the behavioral health system, and in that case, a covered entity may disclose protected health information to the human rights committee in its capacity as a health oversight agency. See § 164.512(d)(1).

- Disclosure to the Arizona Department of Corrections - Protected health information may be disclosed without patient authorization to the state department of corrections in cases where prisoners confined to the state prison are patients in the state hospital on authorized transfers either by voluntary admission or by order of the court. See A.R.S. § 36-509(A)(6). The HIPAA Rule limits disclosure to correctional institutions to certain categories of information that are contained in § 164.512(k)(5).

- Disclosure to a governmental agency or law enforcement to secure return of a patient - Protected health information may be disclosed to governmental or law enforcement agencies if necessary to secure the return of a patient who is on unauthorized absence from any agency where the patient was undergoing court ordered evaluation or treatment. See A.R.S. § 36-509(A)(7). A covered entity may disclose limited information without patient authorization to law enforcement to secure the return of a missing person. See § 164.512(f)(2)(i). In addition, a covered entity is permitted limited disclosure to governmental agencies to prevent or lessen a serious and imminent threat to the health or safety of a person or to the public. See §164.512(j).

- Disclosure to a Sexually Violent Persons (SVP) Program - Protected health information may be disclosed to a governmental agency or a competent professional, as defined in A.R.S. § 36-3701, in order to comply with the SVP Program (Arizona Revised Statutes, Title 36, Chapter 37). See A.R.S. § 36-509(A)(11).

  A "competent professional" is a person who may be a psychologist or psychiatrist, is approved by the Superior Court and is familiar with the state's sexually violent persons statutes and sexual offender treatment programs. A competent professional is either statutorily required or may be ordered by the court to perform an examination of a person involved in the sexually violent persons program and shall be given reasonable access to the person in order to conduct the examination and shall share access to all relevant medical and psychological records, test data, test results and reports. See A.R.S. § 36-3701(2).

  In most cases, the disclosure of protected health information to a competent professional or made in connection with the sexually violent persons program is required by law or ordered

by the court. In either case, disclosure under the HIPAA Rule without patient authorization is permitted. See § 164.512(a) (disclosure permitted when required by law) and § 164.512(e) (disclosure permitted when ordered by the court). If the disclosure is not required by law or ordered by the court or is to a governmental agency other than the sexually violent persons program, the covered entity may have the authority to disclose if the protected health information is for treatment, payment or health care operations. See § 164.506(c) to determine rules for disclosure for treatment, payment or health care operations.

- Disclosure of confidential communicable disease information - A.R.S. § 36-661 *et seq.*, includes a number of provisions that address the disclosure of confidential communicable disease information. The general rule is that a person who obtains confidential communicable disease related information in the course of providing a health service or pursuant to a release of confidential communicable disease related information shall not disclose or be compelled to disclose that information. See A.R.S. § 36-664(A). Certain exceptions for disclosure are permitted to:
  - The individual;
  - A Good Samaritan or other person authorized by law;
  - An agent or employee of a health facility or a health care provider;
  - A health facility or a health care provider;
  - A federal, state or local health officer;
  - Government agencies;
  - Persons authorized pursuant to a court order;
  - The Department of Economic Security;
  - The Industrial Commission;
  - The Department of Health Services to conduct inspections; and
  - Insurance entities.

  A.R.S. § 36-664 also addresses issues with respect to:

  Disclosures to the Department of Health Services or local health departments are also permissable under certain circumstances:
  - Authorizations;
  - Redisclosures;
  - Disclosures for supervision, monitoring and accreditation;
  - Record keeping;
  - Listing information in death reports;
  - Reports to the Department; and
  - Applicability to insurance entities.

  A release of confidential communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent to health care for the person. See A.R.S. § 36-664(E). A release shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information, including confidential communicable disease related information, is not an authorization for the release of confidential HIV-related information

unless the authorization specifically indicates its purpose as a general authorization and an authorization for the release of confidential HIV-related information and complies with the requirements of A.R.S. § 36-664(E).

The HIPAA Rule does not preempt state law with respect to disclosures of confidential communicable disease information; however, it may impose additional requirements depending upon the type, nature and scope of disclosure. It is advisable to consult with legal counsel prior to disclosure of confidential communicable disease information.

For example, if a disclosure of confidential communicable disease related information is made pursuant to a release, the disclosure shall be accompanied by a statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law. A.R.S. § 36-664(G) affords greater privacy protection than § 164.508(c)(2)(ii), which requires the authorization to contain a statement to place the individual on notice of the potential for redisclosure by the recipient and thus, is no longer protected. Therefore, any authorization for protected health information that includes communicable disease information must contain the statement that redisclosure of confidential communicable disease information is prohibited.

- Disclosure to business associates - The HIPAA Rule allows a covered entity to disclose protected health information to a business associate if the covered entity obtains satisfactory assurances that the business associate will safeguard the information. See § 164.502(e). See the definition of "business associate" in § 160.103. Also see § 164.504(e) for requirements related to the documentation of satisfactory assurances through a written contract or other written agreement or arrangement.

- The Arizona Center for Disability Law, acting in its capacity as the State Protection and Advocacy Agency pursuant to 42 U.S.C. 10805, when:
  - An enrolled person is mentally or physically unable to consent to a release of confidential information, and the person has no legal guardian or other legal representative authorized to provide consent; and

  - A complaint has been received by the Center or the Center asserts that the Center has probable cause to believe that the enrolled person has been abused or neglected.

4.1.7-D. Disclosures of alcohol and drug information

- T/RBHAs and their subcontracted providers that provide drug and alcohol screening, diagnosis or treatment services are federally assisted alcohol and drug programs and shall ensure compliance with all provisions contained in the Federal statutes and regulations referenced in this section.

- T/RBHAs and their subcontracted providers shall notify persons seeking and/or receiving alcohol or drug abuse services of the existence of the federal confidentiality law and regulations and provide each person with a written summary of the confidentiality provisions. The notice and summary shall be provided at admission or as soon as deemed clinically appropriate by the person responsible for clinical oversight of the person.

- T/RBHAs or their subcontracted providers may require enrolled persons to carry identification cards while the person is on the premises of an agency. A T/RBHA or subcontracted provider may not require enrolled persons to carry cards or any other form of identification when off the T/RBHA's or subcontractor's premises that will identify the person as a recipient of drug or alcohol services.

- T/RBHAs or their subcontracted providers may not acknowledge that a currently or previously enrolled person is receiving or has received alcohol or drug abuse services without the enrolled person's authorization as provided in section 4.1.7-D. of this policy.

- T/RBHAs or their subcontracted providers shall respond to any request for a disclosure of the records of a currently or previously enrolled person that is not permissible under this policy or federal regulations in a way that will not reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse.

- The T/RBHA or subcontracted provider shall advise the person or guardian of the special protection given to such information by federal law.

- Release of information concerning diagnosis, treatment or referral from an alcohol or drug abuse program shall be made only as follows:
  - The currently or previously enrolled person or their guardian authorizes[1] the release of information. In this case:
    - Authorization must be documented on an authorization form which has not expired or been revoked by the patient. The proper authorization form must be in writing and must contain each of the following specified items:
      - The name or general designation of the program making the disclosure;
      - The name of the individual or organization that will receive the disclosure;
      - The name of the person who is the subject of the disclosure;
      - The purpose or need for the disclosure;
      - How much and what kind of information will be disclosed;
      - A statement that the person may revoke the authorization at any time, except to the extent that the program has already acted in reliance on it;
      - The date, event or condition upon which the authorization expires, if not revoked before;
      - The signature of the person or guardian; and
      - The date on which the authorization is signed.

Redisclosure - Authorization as provided above, must be accompanied by the following written statement: "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A

[1] For purposes of uniformity and clarity, the term "authorization" is used throughout this policy to reference a person's permission to disclose medical records and protected health information and has the same meaning as "consent" which is used in 42 CFR Part 2.

general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

- If the person is a minor, authorization shall be given by both the minor and his or her parent or legal guardian.

- If the person is deceased, authorization may be given by:
  - A court appointed executor, administrator or other personal representative;
  - If no such appointments have been made, by the person's spouse; or
  - If there is no spouse, by any responsible member of the person's family.

- Authorization is not required under the following circumstances:

Medical Emergencies – information may be disclosed to medical personnel who need the information to treat a condition which poses an immediate threat to the health of any individual, not necessarily the currently or previously enrolled person, and which requires immediate medical intervention. The disclosure must be documented in the person's medical record and must include the name of the medical person to whom disclosure is made and his or her affiliation with any health care facility, name of the person making the disclosure, date and time of the disclosure and the nature of the emergency. After emergency treatment is provided, written confirmation of the emergency must be secured from the requesting entity.

Research Activities – information may be disclosed for the purpose of conducting scientific research according to the provisions of 42 CFR § 2.52.

Audit and Evaluation Activities – information may be disclosed for the purposes of audit and evaluation activities according to the provisions of 42 CFR § 2.53.

Qualified Service Organizations – information may be provided to a qualified service organization when needed by the qualified service organization to provide services to a currently or previously enrolled person.

Internal Agency Communications - the staff of an agency providing alcohol and drug abuse services may disclose information regarding an enrolled person to other staff within the agency, or to the part of organization having direct administrative control over the agency, when needed to perform duties related to the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment to a person. For example, an organization that provides several types of services might have an administrative office that has direct administrative control over each unit or agency that provides direct services.

Information concerning an enrolled person that does not include any information about the enrolled person's receipt of alcohol or drug abuse diagnosis, treatment or referral for treatment is not restricted under this section. For example, information concerning an enrolled person's receipt of medication for a psychiatric condition, unrelated to the person's substance abuse, could be released as provided in section 4.1.7-C. of this policy.

Court-ordered disclosures – A state or federal court may issue an order that authorizes an agency to make a disclosure of identifying information that would otherwise be prohibited. A subpoena, search warrant or arrest warrant is not sufficient standing alone, to require or permit an agency to make a disclosure.

Crimes committed by a person on an agency's premises or against program personnel. Agencies may disclose information to a law enforcement agency when a person who is receiving treatment in a substance abuse program has committed or threatened to commit a crime on agency premises or against agency personnel. In such instances, the agency must limit the information disclosed to the circumstances of the incident. It may only disclose the person's name, address, last known whereabouts and status as a person receiving services at the agency.

Child abuse and neglect reporting – Federal law does not prohibit compliance with the child abuse reporting requirements contained in A.R.S. § 13-36-3620.

- A general medical release form or any authorization form that does not contain all of the elements listed in 4.1.7-D. above is not acceptable.

[T/RBHA add information here]